

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1747-R

Reconsideration Granted
Request to Reopen Granted
Reversed and Remanded

PROCEDURAL HISTORY: On July 21, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 131405) concluding that claimant was not eligible for benefits on a claim effective October 10, 2010. On July 23, 2014, the Department served notice of a decision (decision # 91542) concluding that claimant was overpaid \$8,111 in regular unemployment insurance benefits. On July 29, 2014, the Department served notice of an administrative decision (decision # 90327) concluding that claimant was overpaid \$576 in regular unemployment insurance benefits. On July 30, 2014, the Department served notice of an administrative decision (decision # 75800) concluding that claimant was not eligible for benefits on a claim that expired on May 24, 2014. On July 31, 2014, the Department served notice of an administrative decision (decision # 95209) concluding that claimant was overpaid \$2,261 in regular unemployment insurance benefits. On August 1, 2014, the Department served notice of an administrative decision (decision # 80211) concluding that claimant was overpaid \$28 in regular unemployment insurance benefits. Claimant filed timely requests for hearing on all six decisions.

On August 19, 2014, the Office of Administrative Hearings (OAH) issued notice of a consolidated hearing on the above six administrative decisions; the hearing was scheduled for September 2, 2014. On September 2, 2014, ALJ Clink conducted hearing in which the Department did not participate, and on September 8, 2014, issued the following hearing decisions: Hearing Decision 14-UI-24740, modifying decision # 131405 and concluding claimant was eligible for benefits; Hearing Decision 14-UI-24741, setting aside decision #95209 and concluding that claimant was not overpaid benefits; Hearing Decision

14-UI-24742, setting aside decision # 91542 and concluding that claimant was not overpaid benefits; Hearing Decision 14-UI-24743, setting aside decision #90327, and concluding that claimant was not overpaid benefits; Hearing Decision 14-UI-24744, setting aside decision # 80211, and concluding that claimant was not overpaid benefits;¹ and Hearing Decision 14-UI-24745, modifying decision # 75800, and concluding that claimant was eligible for benefits.

The Department filed a timely request to reopen. On October 21, 2014, ALJ Kirkwood conducted a consolidated hearing and issued Hearing Decisions 14-UI-27280, 14-UI-27281, 14-UI-27284, 14-UI-27286, 14-UI-27288, and 14-UI-27289, denying the requests to reopen and stating that the hearing decisions issued on September 8, 2014² remained undisturbed.

On November 7, 2014, the Department filed applications for review of Hearing Decisions 14-UI-27280, 14-UI-27281, 14-UI-27284, 14-UI-27286, 14-UI-27288, and 14-UI-27289 with the Employment Appeals Board (EAB).

On November 19, 2014, EAB issued Appeals Board Decisions 2014-EAB-1742, 2014-EAB-1743, 2014-EAB-1744, 2014-EAB-1745, 2014-EAB-1746, and 2014-EAB-1747, affirming the hearing decisions under review.

On March 18, 2015, the Department requested reconsideration of all the Appeals Board Decisions issued on November 19, 2014. OAR 471-041-0145(2)(a) (October 29, 2006) provides that a request for reconsideration is subject to dismissal unless it is filed within 20 days of the date on which the decision sought to be reconsidered is mailed. The Department's request for reconsideration is therefore untimely. Pursuant to the authority granted EAB under ORS 657.290(3), however, we will reconsider the November 19, 2014 decisions on our own motion.

CONCLUSIONS AND REASONS: On reconsideration, the Department's request to reopen is granted, and the matter is remanded for a new hearing and hearing decisions.

In its request for reconsideration, the Department explained that it failed to appear at the September 2, 2014 hearing in these cases because OAH failed to provide notice of the issues to be considered at the hearing. The Department asserted that the Department had agreed that OAH could provide it with electronic notice of hearings. Because of a problem of which OAH was unaware, however, the notice sent to the Department did not include any information about or notice of the issues for the September 2, 2014 hearing.

OAR 471-040-0015(1) (August 1, 2004) provides:

To afford all parties a reasonable opportunity for a fair hearing, notice of hearing setting forth the time, date, place, and issue(s) in general shall be personally delivered or mailed at

¹ In the Order section of Hearing Decision 14-UI-24744, the ALJ states that the decision issued on July 29, 2014 is set aside. This appears to be a scrivener's error; in the History of the Case portion of the decision, the ALJ notes that the hearing addresses claimant's request for hearing on the decision issued on August 1, 2014 (decision # 80211).

² Hearing Decisions 14-UI-24740, 14-UI-24741, 14-UI-24742, 14-UI-24743, 14-UI-24744, and 14-UI-24745.

least five days in advance of the hearing to parties or their authorized agents at their last known address as shown by the record of the Director.

Because the Department received no notice of the issues to be considered at the September 2 hearing, it was denied a reasonable opportunity for a fair hearing in violation of its due process rights. ORS 657.290(3) permits EAB to reconsider a decision, and remand it to OAH to make a “new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” EAB erred when it affirmed the hearing decisions under review and denied the Department’s request to reopen. The Department’s request to reopen is, therefore, allowed. Hearing Decisions 14-UI-27280, 14-UI-27281, 14-UI-27284, 14-UI-27286, 14-UI-27288, and 14-UI-27289 are reversed and these matters remanded pursuant to ORS 657.275(1) for a new hearing on the merits and new hearing decisions.

DECISION: On reconsideration, Hearing Decisions 14-UI-27280, 14-UI-27281, 14-UI-27284, 14-UI-27286, 14-UI-27288, and 14-UI-27289 are set aside, and these matters remanded for further proceedings consistent with this order.

Susan Rossiter, Tony Corcoran and J.S. Cromwell.

DATE of Service: March 23, 2015

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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